

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 133/Chd/2024
निर्धारण वर्ष / Assessment Year : 2014-15

Subhash Chander Prop. M/s. Ashoka Metals And Chemicals 457 Nirankari Street No. 1 Miller Ganj, Ludhiana, Punjab	बनाम	The ITO Ward- IV(2), Ludhiana Punjab
स्थायी लेखा सं. / PAN NO: ABEP7884R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओर से / Revenue by : Ms. Tarundeep Kaur, Addl. CIT, Sr. DR.
सुनवाई की तारीख / Date of Hearing : 15/10/2024
उदघोषणा की तारीख / Date of Pronouncement : 26/11/2024

आदेश / Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)/ NFAC, Delhi dt. 15/12/2023 pertaining to Assessment Year 2014-15.

2. In the present appeal, Assessee has raised the following grounds of appeal:

1. That the Ld. CIT(A), NFAC, Delhi has erred in confirming the order of the Assessing Officer in reopening of the case u/s 148 and, thereby, making an addition of Rs. 75,96,176/- as made by the Assessing Officer by applying the gross profit of 0.92% on the total receipts of Rs. 82,56,71,331/-.

2. That no notice of hearing was received from the CIT(A), NFAC in a physical mode and all the notices of hearing were sent through digital mode, which were not accessed by the assessee, since the business of the firm had closed as on 31.03.2016 and PAN card was also surrendered by the assessee on 12.06.2018 and it was intimated to the concerned Assessing Officer as well.

3. That the original assessment was framed by the Assessing Officer vide order, dated 30.06.2016 after due application of mind arid, in which, all such details of purchases and sales had been duly filed and, thus, the reopening of the case is merely on change of opinion, which is not permitted as per law in view of

the judgment of Apex Court in the case of Kelvinator of India, reported in 320 ITR 561

4. *That even otherwise since the appellant had closed down his business as on 31.03.2016 and also no person was there to look after the business premises as staff/accountant, who had been looking after the accounting work and other jobs of the assessee had left and the assessee being illiterate did not have any knowledge of the digital data.*
 5. *Notwithstanding, the above said ground of appeal, there was no reason to believe that the income of the assessee had escaped assessment and also no approval u/s 151 appears to have been taken from the 'Competent Authority' as the same could not be found by the assessee, from the records of the department, as per inspection taken by the assessee and, as such, the reopening of the case u/s 148 deserves to be quashed.*
 6. *That even otherwise, the mechanical approval does not have any sanctity in the eyes of law with regard to reopening of the case u/s 148.*
 7. *Notwithstanding the above said ground of appeal, the application of gross profit @ 0.92% on the total amount of Rs. 82,56,71,331/- is uncalled for and deserves to be deleted.*
 8. *That all the purchases and sales are effected on the strength of regular bills and such purchases and sales have been duly recorded in Form No. 18 St Form No. 19 of Punjab Vat Act 2005.*
 9. *That the Ld. Assessing Officer/CIT(A) has failed to appreciate that all the purchases and sales have been effected through banking channels, which are duly reflected in the regular books of accounts of the assessee and, thus, addition as made by the Assessing officer is purely on surmises and conjectures.*
 10. *That the addition as made by the Assessing Officer and confirmed by the CIT(A) only on the basis of cancellation of VAT Numbers of the supplier parties, is no longer valid, since such cancellation was made on 27.10.2016, i.e. much after the transactions were made with the parties.*
 11. *That the Ld. CIT(A) has failed to appreciate the fact that the parties from whom the purchases have been made were genuine parties and have been assessed by the Excise & Taxation department and, thus, the genuineness of purchases is duly verified.*
 12. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard disposed off.*
3. During the course of hearing, the Id AR submitted that this is a case of an assessee who is doing the business of trading of Chemicals iron and metals. It was submitted that the original assessment has been completed under section 143(3) of the Income Tax Act, 1961 vide order dated 30.08.2016. The case was thereafter reopened under section 147 of the I.T Act, 1961 by issuing notice u/s

148 of the Act on 28.03.2019. It was submitted that the business of the assessee was closed in the year 2018 due to the ill health of the assessee and the assessee had not received any notice for hearing in physical manner and, as such, the assessment has been completed under section 144 r.w.s 147 of the Income Tax Act, 1961 vide order dated 27.12.2019.

4. It was submitted that the AO has made the assessment as per information received from the office of Excise and Taxation Commissioner, Patiala with regard to bogus purchase from cancelled dealers who were engaged in the business of iron and steel and had no stock of non-ferrous metal etc. The AO had applied the G.P @0.92% on the gross sales of Rs 82,56,7,1331/- and made the additions of Rs. 75,96,176/-.

5. It was submitted that being aggrieved by the order of the AO, the assessee's counsel namely Sh. Vijay Bajaj has filed an appeal before Worthy CIT(A) NFAC Delhi on 27.01.2020. While filing the appeal, the counsel of the assessee has registered his own mobile number and email id i.e. baiajadvocate1@gmail.com and vkbajajadvocate@yahoo.co.in on the prescribed Form No.35 as well as profile of the appellant in the income tax portal as per copy of the extract of income tax portal of the appellant which is part of the paper book at page no.1 to 2. It was submitted that subsequent thereto, the appeal was fixed and the various notices for hearing have been sent by the Id CIT(A) NFAC Delhi on the emails of his counsel vkbajaiadvocate@yahoo.co.in as per copy of the notices for hearing is part of the paper book as page no.3 to 5. It was submitted that the counsel of the appellant has submitted the response against the last two notices as issued by the Id CIT(A) NFAC Delhi as per the acknowledgement of responses is attached with the paper book at page No. 6 to 7 and requested for adjournment. It was submitted that except that the counsel of the assessee had neither intimated to the appellant nor submitted any response to the notices of the worthy CIT(A)

NFAC Delhi. The above said facts have also been admitted/oath by the appellant by filing of affidavit at page no.8 to 9 of the paper book. As a result, the assessee was not able to file his detailed submissions during the course of appellate proceedings, therefore, the Id CIT(A) has passed the ex-parte order dated 15.12.2023. That thus there was no fault of the assessee and the assessee was dependent upon his Counsel and did not know about such notices. It was submitted that the Id CIT(A) NFAC has also not decided the case on merit as is the case before the AO who has also passed the order u/s 144 of the Act. It was accordingly submitted that the matter may be set-aside to the file of the Id CIT(A) and the assessee would duly cooperate during the appellate proceedings.

6. The Id DR is heard who has submitted that there was no effective compliance on part of the assessee/Counsel before the Id CIT(A) and the assessee cannot plead ignorance of the proceedings and need to be diligent enough and cannot take refuge by stating that he has appointed the Counsel and the Counsel has not taken appropriate action. At the same time, it was fairly submitted that since there are no findings on merits of the case, the Revenue has no objection where the matter is set-aside to the file of the Id CIT(A) to adjudicate the same on merits.

7. We have heard the rival contentions and perused the material available on record. Considering the facts and circumstances of the case and taking into consideration ill health of the assessee and other surrounding circumstances in terms of closure of the business as so claimed, we believe that the assessee deserve one more opportunity to represent his case before the Id CIT(A) as admittedly, there is no finding on merits of the case which has been recorded by him. In the result, the matter is set-aside to the file of the Id CIT(A) to decide the same afresh on merits of the case as per law after providing reasonable opportunity to the assessee. Needless to say, the assessee shall cooperate in

the proceedings before the Id CIT(A) and would be at liberty to file necessary submissions/documentation as so advised which shall be considered by the Id CIT(A) as per law.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 26/11/2024

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar